

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

CITY OF CLYDE, OHIO,

and

STATE OF OHIO,

Defendants.

CIVIL ACTION NO.:

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action pursuant to Section 309(b) and (d) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(b) and (d), for injunctive relief and assessment of civil penalties against the City of Clyde, Ohio ("Clyde"), for the discharge of pollutants into the navigable waters of the United States from the Clyde Wastewater Treatment Plant and from other locations in Clyde's sewer system in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and the disposal or use of sewage sludge in violation of Section 405(d) and (e) of the Act, 33 U.S.C. § 1345(d) and (e). The State of Ohio (the "State") has been joined as a party to this action pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e). In this action, the United States seeks (1) injunctive relief and civil penalties against Clyde for its violations of Section 301 of the Act, 33 U.S.C. § 1311; (2) civil penalties against Clyde for its violations of Section 405(d) and (e) of the Act, 33 U.S.C. § 1345(d) and (e) as well as for violations of certain terms and conditions of the National Pollutant Discharge Elimination System ("NPDES") Permits issued to Clyde; (3) civil penalties against Clyde for its failure to comply with an Administrative Order issued by U.S. EPA under Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3); and (4)

judgment against the State to the extent the laws of the State prevent Clyde from raising revenues needed to comply with any judgment in this action, pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and Section 309(b) of the Act, 33 U.S.C. § 1319(b).

3. Venue is proper in the Northern District of Ohio pursuant to 28 U.S.C. §§ 1391(b) and (c), 1395(a), and Section 309(b) of the Act, 33 U.S.C. § 1319(b), because Clyde is located in this district and the causes of action alleged in this Complaint arose in this district.

4. The United States has provided notice of this action to the State pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

DEFENDANTS

5. Clyde is a municipal corporation organized under the laws of the State, and is located in Sandusky County, Ohio. Clyde is a "municipality" and a "person" within the meaning of Section 502(4) and (5) of the Act, 33 U.S.C. § 1362(4) and (5), and 40 C.F.R. § 122.2.

6. Clyde owns, operates, and maintains the City of Clyde Wastewater Treatment Plant ("WWTP"), located at 749 West McPherson Highway, Clyde, Sandusky County, Ohio, which treats wastewater produced in and around Clyde, Ohio. The WWTP is a publicly owned treatment works, within the meaning of 40 C.F.R. § 122.2.

7. At all times relevant to this Complaint, the WWTP has received or treated and continues to receive or treat wastewater from residential and industrial sources, and has discharged and continues to discharge its effluent into Raccoon Creek.

8. The WWTP discharges effluent into Raccoon Creek through a pipe, identified as Outfall 2PD00004001 ("Outfall 001") in Clyde's 1994, 1997, and 2002 Permits, defined below, which is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

9. At all times relevant to this Complaint, Clyde has discharged and continues to discharge "pollutants" within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C.

§ 1362(6) and (12), by the discharge of its effluent through Outfall 001 into Raccoon Creek.

10. Raccoon Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and is part of the "waters of the United States" within the meaning of 40 C.F.R. § 122.2.

11. The State is a "person" as that term is defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5).

12. Pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment entered against Clyde in this action, to the extent that the laws of the State prevent Clyde from raising revenues needed to comply with such judgment.

STATUTORY BACKGROUND

13. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the "discharge of pollutants" into navigable waters by any person except, inter alia, in compliance with an NPDES permit issued by U.S. EPA or an authorized state pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

14. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the permit issuing authority, U.S. EPA or an authorized state, may issue NPDES permits for the discharge of pollutants. The permit issuing authority shall, in issuing NPDES permits, prescribe the conditions for such permits as it determines are necessary to carry out the provisions of the Act.

15. At all times relevant to this Complaint, the State has been and continues to be authorized by the Administrator of the U.S. EPA to administer the NPDES permit program for discharges into navigable waters within its jurisdiction, pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). 39 Fed. Reg. 26061 (July 16, 1974)

16. Pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i), if NPDES permitting and enforcement authority is delegated to a State pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), the Administrator of the U.S. EPA retains the authority to take enforcement action under Section 309 of the Act, 33 U.S.C. § 1319.

17. Section 405(e) of the Act, 33 U.S.C. § 1345(e), prohibits the disposal of

sewage sludge from a publically owned treatment works for any use for which the Administrator of the U.S. EPA has established regulations pursuant to Section 405(d) of the Act, 33 U.S.C. § 1345(d), except in accordance with those regulations.

18. Section 405(d) of the Act, 33 U.S.C. § 1345(d), requires the Administrator of the U.S. EPA to develop and publish regulations for the use and disposal of sewage sludge.

19. On February 19, 1993, pursuant to Sections 405(d) and 405(e) of the Act, the Administrator of the U.S. EPA promulgated "Standards for the Use or Disposal of Sewage Sludge," which are codified at 40 C.F.R. Part 503. 58 Fed. Reg. 9387.

20. 40 C.F.R. § 503.3(b) provides that no person shall use or dispose of sewage sludge through any practice for which requirements are established in Part 503, except in accordance with such requirements.

21. Among other things, 40 C.F.R. Part 503 establishes requirements for the disposal of sewage sludge through land application.

22. Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), authorize the Administrator of U.S. EPA to commence a civil action for appropriate relief, including a temporary or permanent injunction, and civil penalties, for any violation of Section 301, 402, or 405 of the Act, 33 U.S.C. §§ 1311, 1342, 1345.

23. Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), provides in part that any person who violates Section 301 or Section 405 of the Act, 33 U.S.C. §§ 1311 or 1345, shall be subject to injunctive relief and the assessment of a civil penalty not to exceed \$25,000 per day for each violation of the Act occurring on or before January 30, 1997, and pursuant to Pub. L. 104-134 and 40 C.F.R. Part 19, \$27,500 per day for each violation of the Act occurring after January 30, 1997.

GENERAL ALLEGATIONS

24. On or about June 29, 1994, the Ohio Environmental Protection Agency ("Ohio EPA"), under the authority of Section 402(b) of the Act, 33 U.S.C. § 1342(b), issued an NPDES permit, Ohio EPA Permit No. 2PD00004*JD to Clyde which became effective on August 1, 1994. On or about October 21, 1994 and November 1, 1994, Ohio EPA issued minor

modifications to Permit No. 2PD00004*JD which became Ohio EPA Permit No. 2PD00004*KD, and was effective on or about January 2, 1995.

25. The 1994 Permit with its two modifications (hereinafter "1994 Permit"), remained in effect until the 1997 Permit, defined below, was issued by Ohio EPA on or about September 19, 1997. A copy of the 1994 Permit, and its two modifications, is attached to this Complaint as Exhibit A and incorporated herein by reference.

26. The 1994 Permit and its subsequent modifications authorized, inter alia, the discharge of certain pollutants from Outfall 2PD00004001 ("Outfall 001") into Raccoon Creek subject to the terms and conditions of the 1994 Permit.

27. On or about September 19, 1997, the Ohio EPA, under the authority of Section 402(b) of the Act, 33 U.S.C. § 1342(b), issued to Clyde an NPDES permit, Ohio EPA Permit No. 2PD00004*LD (the "1997 Permit"). The 1997 Permit became effective on November 1, 1997, and remained effective until 2002. A copy of the 1997 Permit is attached to this Complaint as Exhibit B and incorporated herein by reference.

28. The 1997 Permit authorized, inter alia, the discharge of certain pollutants from Outfall 001 into Raccoon Creek subject to the terms and conditions of the 1997 Permit.

29. In addition, the 1994 and the 1997 Permits authorized the discharge of certain pollutants from four overflows, 2PD00004003, 2PD00004005, 2PD00004006, 2PD00004008 (hereinafter overflows 4003, 4005, 4006, and 4008, respectively), only during wet weather periods when the flow in the sewer system exceeds the capacity of the sewer system.

30. Under Section 402(b) of the Act, 33 U.S.C. s 1342(b) the Ohio EPA issued NPDES Permit No. 2PD00004*MD (the "2002 Permit") to Clyde. The Permit became effective on July 1, 2002. A copy of the 2002 Permit is attached to this Complaint as Exhibit C and incorporated herein by reference.

31. The 2002 Permit authorizes the discharge of certain pollutants for three overflows, 4006, 4009, and 4010, for combined sewer overflow ("CSO") monitoring into Raccoon Creek subject to terms and conditions of the 2002 Permit.

32. Further, the 1994 and 1997 Permits required, and the 2002 Permit requires, Clyde to comply with certain effluent monitoring requirements.

33. Clyde's WWTP is a "treatment works" as defined by 40 C.F.R. § 503.9(aa) with a design flow rate of greater than 1 million gallons per day.

34. Clyde's WWTP is a publicly owned treatment works ("POTW") as defined by 40 C.F.R. § 501.2 and a "Class I Sludge Management Facility" as defined by 40 C.F.R. §§ 501.2 and 503.9(c).

35. At all times relevant to this Complaint, Clyde's POTW treated domestic sewage.

36. Clyde's POTW treatment process for domestic sewage produced sewage sludge that Clyde applied to land as defined by 40 C.F.R. § 503.9(a) and 503.11(h).

37. Pursuant to Section 405 (e) of the Act, 33 U.S.C. § 1345(e), and 40 C.F.R. § 503.1(b), Clyde is subject to the requirements of 40 C.F.R. Part 503.

FIRST CLAIM FOR RELIEF

DISCHARGES FROM WWTP THAT EXCEED EFFLUENT LIMITATIONS

38. The United States incorporates herein the allegations contained in paragraphs 1 through 37 of this Complaint.

39. The 1994 and the 1997 Permits established, and the 2002 Permit establishes, effluent limitations for several pollutants, including, inter alia, total suspended solids, residual chlorine, nitrogen ammonia, fecal coliform, dissolved oxygen, mercury, phosphorus, pH, silver and copper.

40. The 1994 and the 1997 Permits required, and the 2002 Permit requires, Clyde to (1) conduct sampling and analysis of the WWTP's effluent discharges, (2) record and retain the results of the sampling and analysis, and (3) report the results of the sampling and analysis to Ohio EPA in monthly self-monitoring reports known as "Monthly Operating Reports."

41. On numerous occasions from 1997 through the present, Clyde has discharged and continues to discharge effluent from the WWTP into Raccoon Creek in excess of the effluent limitations contained in Clyde's 1994, 1997, and 2002 Permits.

42. Clyde's violations of its 1994, 1997, and 2002 Permits effluent limitations for total suspended solids, residual chlorine, nitrogen ammonia, fecal coliform, dissolved oxygen,

mercury, phosphorus, pH, silver, and copper include, but are not limited to, the dates set forth in the Table of Effluent Limitation Violations attached to this Complaint as Exhibit D and incorporated herein by reference.

43. Each day that Clyde discharged pollutants in excess of the effluent limitations contained in Clyde's 1994, 1997, and 2002 Permits constitutes daily violations of the 1994, 1997, and 2002 Permits and Section 301 of the Act, 33 U.S.C. § 1311.

44. Discharges of pollutants in excess of the effluent limitations contained in Clyde's 1994, 1997, and 2002 Permits harm the water quality and aquatic life of Raccoon Creek and expose the public to potential health risks.

45. Upon information and belief, Clyde continues to violate the effluent limits contained in its 2002 Permit, and unless restrained by this Court will continue to violate those limits.

46. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d) and the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360, 69365 (1996) and 69 Fed. Reg. 7121, 7125 (2004), Clyde is liable for injunctive relief and civil penalties of up to \$25,000 per day for each violation of its 1994 and 1997 Permits occurring on or before January 29, 1997, up to \$27,500 per day for each violation of its 1997 and 2002 Permits occurring after on or after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

SECOND CLAIM FOR RELIEF

MONITORING VIOLATIONS

47. The United States incorporates herein the allegations contained in paragraphs 1 through 46 of this Complaint.

48. The 1994 and 1997 Permits set forth, and the 2002 Permit sets forth interim and final monitoring requirements for effluent discharged from Outfall 001. These monitoring requirements include, inter alia, monitoring at specific frequencies by specific sampling methods.

49. The 1994 and 1997 Permits required, and the 2002 Permit requires, Clyde to comply with additional monitoring requirements. These include, inter alia, monitoring the

WWTP's influent wastewater at Station Number 2PD00004601 ("Station 601"), monitoring the receiving stream upstream of the point of discharge at Station Number 2PD00004801 ("Station 801") and downstream of the point of discharge at Station Number 2PD00004901 ("Station 901"), and monitoring the WWTP's final sludge at Station Number 2PD00004581 ("Station 581").

50. On numerous occasions from approximately June of 1997 to approximately May of 2002, Clyde failed to monitor at the frequency required by its Permits for fecal coliform at Station 901, Outfall 001, and Station 801, and nitrogen ammonia at Station 001. A table of Clyde's monitoring violations is attached to the Complaint as Exhibit E.

51. Each day that Clyde failed to monitor for effluents at the frequency required by its 1997 and 2002 Permits constitutes a separate violation of the 1997 and 2002 Permits and Section 301 of the Act, 33 U.S.C. § 1311.

52. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d) and the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360, 69365 (1996) and 69 Fed. Reg. 7121, 7125 (2004), Clyde is liable for injunctive relief and civil penalties of up to \$25,000 per day for each violation of its 1997 Permit occurring on or before January 29, 1997, up to \$27,500 per day for each violation of its 1997 and 2002 Permits occurring after on or after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

THIRD CLAIM FOR RELIEF

COMPLIANCE SCHEDULE VIOLATIONS

53. The United States incorporates herein the allegations contained in paragraphs 1 through 52 of this Complaint.

54. The 1994 and 1997 Permits set forth and the 2002 Permit sets forth certain general conditions which regulate combined sewer overflows of untreated wastewater at Clyde's WWTP.

55. The 1994 Permit contained a schedule of compliance that required Clyde to implement the minimum best conventional technology or best available technology control measures applicable to operating and maintaining its collection system by August 1, 1995.

56. On various occasions between April 1996 and August 1998, the City of Clyde's monitoring reports indicate that Clyde bypassed/overflowed excessive untreated wastewater from Outcall 2PD00004003, 2PD00004005, and 2PD00004008.

57. Clyde failed to implement the minimum best conventional technology or best available technology control measures applicable to operating and maintaining its collection system by August 1, 1995. Tables of violations are attached to this Complaint as Exhibit F.

58. Each day that Clyde failed to implement the minimum best conventional technology or best available technology control measures applicable to operating and maintaining its collection system by August 1, 1995 constitutes a separate violation of the schedule of compliance contained in Clyde's 1994 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

59. Upon information and belief, Clyde continues to violate the schedule of compliance set forth in the 1994 Permit and Section 301 of the Act, 33 U.S.C. § 1311, and unless restrained by this Court will continue such violation.

60. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d) and the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360, 69365 (1996) and 69 Fed. Reg. 7121, 7125 (2004), Clyde is liable for injunctive relief and civil penalties of up to \$25,000 per day for each violation of its 1994 Permit and Section 301 of the Act, 33 U.S.C. § 1311 occurring on or before January 29, 1997, up to \$27,500 per day for each violation occurring after on or after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

FOURTH CLAIM FOR RELIEF

SLUDGE MANAGEMENT VIOLATIONS

61. The United States incorporates herein those allegations contained in paragraphs 1 through 60 of this Complaint.

62. 40 C.F.R. § 503.15(a)(3) and (c)(3) prohibits the application of bulk sewage sludge or sewage sludge sold or given away in a bag or other container to the land if Class A pathogen and vector reduction requirements of 40 C.F.R. §§ 503.32 and 503.33 are not met.

63. 40 C.F.R. § 503.17(a)(1) requires that the person who prepares the sewer

sludge to develop information regarding the sludge and certify that the requirements of 40 C.F.R. § 503 are met.

64. Clyde submitted its annual sludge reports for 1994, 1995 and 1996 to U.S. EPA.

65. Clyde's annual sludge reports indicate that on numerous occasions Clyde has failed to comply with the Pathogen Density requirements in 40 C.F.R. § 503.32(b)(2) and the Vector Attraction Reduction requirements in 40 C.F.R. § 503.33. See Exhibit F, attached.

66. Each day that Clyde failed to comply with the pathogen and vector attraction reduction requirements set forth in 40 C.F.R. §§ 503.32 and 503.33, and the certification requirement set forth in 40 C.F.R. § 503.17, constitutes a separate violation of 40 C.F.R. §§ 503.17, 503.32, 503.33, and Section 405(e) of the Act, 33 U.S.C. § 1345(e).

67. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d) and the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360, 69365 (1996) and 69 Fed. Reg. 7121, 7125 (2004), Clyde is liable for injunctive relief and civil penalties of up to \$25,000 per day for each violation of Section 405(e) of the Act, 33 U.S.C. § 1345(e), occurring on or before January 29, 1997, up to \$27,500 per day for each violation of its 1997 and 2002 Permits occurring after on or after January 30, 1997, and up to \$32,500 per day for each violation occurring after March 15, 2004.

FIFTH CLAIM FOR RELIEF

FEDERAL ADMINISTRATIVE ORDER VIOLATIONS

68. The United States incorporates herein those allegations contained in paragraphs 1 through 67 of this Complaint.

69. On or about March 28, 1995, U.S. EPA issued an administrative order ("AO") to the City of Clyde for NPDES permit violations. The AO required Clyde to achieve compliance with its 1994 Permit by June 30, 1995. A copy of the AO is attached to this complaint as Exhibit G.

70. On numerous occasions after June 30, 1995, Clyde violated the effluent limitations and monitoring requirements of its 1994 Permit.

71. Each day after June 30, 1995 that Clyde did not comply with the requirements of its 1994 Permit constitutes a separate violation of the 1995 AO. See table entitled Compliance Order Violations, at bottom of Exhibit F, attached.

72. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d) and the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360, 69365 (1996) and 69 Fed. Reg. 7121, 7125 (2004), Clyde is liable for injunctive relief and civil penalties of up to \$25,000 per day for each violation of the Administrative Order occurring on or before January 29, 1997, up to \$27,500 per day for each violation of its Administrative Order occurring after on or after January 30, 1997, and up to \$32,500 per day for each violation of the Administrative Order occurring after March 15, 2004.

SIXTH CLAIM FOR RELIEF

LIABILITY OF THE STATE OF OHIO

73. The United States incorporates herein those allegations contained in paragraphs 1 through 72 of this Complaint.

74. To the extent any law of the State of Ohio prevents Clyde from raising revenues needed to comply with any judgment entered against Clyde in this action, pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), the State is liable for payment of any judgment, or any expenses incurred by Clyde as a result of complying with any judgment.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff United States of America prays that the Court:

75. Permanently enjoin the City of Clyde from further violations of the Clean Water Act and of Clyde's 2002 Permit, or any future NPDES permit that replaces the 2002 Permit;

76. Order the City of Clyde to comply with all terms and conditions of the 2002 Permit, and any future NPDES permit that replaces the 2002 Permit, and to undertake and complete expeditiously all actions necessary to ensure that Clyde's Wastewater Treatment Plant operates in compliance with its 2002 Permit or any future replacement NPDES permit, and all other applicable requirements of the Clean Water Act and the regulations promulgated

thereunder;

77. Order the City of Clyde to develop, on an expedited basis, a compliance plan that describes the corrective measures Clyde will take to achieve compliance with the Act, regulations promulgated thereunder, and its 2002 Permit or any future replacement NPDES permits;

78. Order the City of Clyde to implement any compliance plan for Clyde's Wastewater Treatment Plant developed pursuant to an order of this Court on an expedited schedule, after approval of such plan by U.S. EPA and Ohio EPA;

79. Order the City of Clyde to pay a civil penalty of up to \$25,000 per day for each violation of the Clean Water Act occurring on or before January 29, 1997, \$27,500 per day for each violation of the Clean Water Act occurring after January 30, 1997, and up to \$32,500 per day for each violation of the Clean Water Act occurring after March 15, 2004, alleged in the First, through Fifth Claims for Relief, pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d) and the Civil Monetary Penalty Inflation Adjustment Rule, 61 Fed. Reg. 69360, 69365 (1996) and 69 Fed. Reg. 7121, 7125 (2004);

80. Order the State of Ohio to pay any judgment in this action, including the cost of all injunctive actions and compliance expenses resulting therefrom, to the extent Ohio law prevents the City of Clyde from raising revenues needed to comply with the judgment; and

81. Grant the Plaintiff, the United States of America, such further relief as the Court deems just and proper.

Respectfully submitted,

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

MARY REED
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

GREG WHITE
United States Attorney

By:

HOLLY SYDLOW
Assistant US Attorney
Four Seagate, Suite 308
Toledo, OH 43604

OF COUNSEL:
Jose C. de Leon, Assistant Regional Counsel
U.S. EPA, Region 5 (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590